

AGREEMENT
FOR THE ESTABLISHMENT OF A COUNTY DRAIN
AND COUNTY DRAINAGE DISTRICT
PURSUANT TO SECTION 433 OF ACT NO. 40
OF THE PUBLIC ACTS OF 1956, AS AMENDED

THIS AGREEMENT, made and entered into this _____ day of _____, 200_, by and between Blaine Van Sickle, Calhoun County Drain Commissioner, hereinafter referred to as Drain Commissioner on behalf of the _____ proposed _____ Drain _____ Drainage District; and _____, a Michigan Corporation, as owner(s) of land described in Exhibit A attached hereto, hereinafter referred to as Landowner .

WITNESSETH:

Whereas, Section 433 of Act No. 40 of the Public Acts of 1956, as amended, authorizes the Drain Commissioner to enter into an Agreement with the Landowner and developer, if any, to establish a drain which was constructed by the Landowner or developer to service an area of its own land as a County Drain; and,

Whereas, Landowner, pursuant to Section 433 of Act No. 40 of 1956, as amended, wishes to provide drainage service to its own lands and has requested same to be established and dedicated as a County Drain under the jurisdiction of the Calhoun County Drain Commissioner; and,

Whereas, Landowner has been advised and understands and agrees to assume the total cost of the construction of the drain to include engineering, inspection, easement acquisition, legal and administrative expenses and costs attendant to this Agreement; and,

Whereas, Landowner further understands that the Drain constructed, or to be constructed, pursuant to this Agreement, when finally accepted by the Drain Commissioner, will be known as the _____ Drain and that the land to be drained will be known and constituted as the _____ Drain Drainage District and will be subject to assessments, for costs of future operation, inspection, maintenance and improvement; and,

Whereas, Landowner has agreed to assume and pay all costs as set forth herein; and,

Whereas, Landowner has obtained, at its own expense, a certificate from a registered professional engineer satisfactory to the Drain Commissioner to the effect that the Drain has sufficient capacity to provide adequate drainage service without detriment to or diminution of the drainage service which the outlet currently provides. A copy of said certificate being attached hereto as Exhibit B.

Now, Therefore, in consideration of the premises and covenants of each, the parties hereto agree as follows:

1. Landowner agrees to construct and/or has constructed, at its expense, the Drain in accordance with plans and specifications approved by the Drain Commissioner.
2. The Landowner agrees to pay the costs of construction of said Drain and drainage facilities, including the acquisition of the necessary rights of way or easements, engineering, surveying, inspection, legal and administrative costs. In addition, the Landowner has deposited with the Drain Commissioner an amount of money equivalent to five (5%) percent of the costs of construction of the Drain, not to exceed Two Thousand Five Hundred and No/100 (\$2,500.00) Dollars, which monies are to be deposited in a special drain fund to be used for future maintenance of the Drain, hereinafter referred to as _____ Drain Maintenance Fund .

3. That the Landowner shall secure at its own expense, all easements or rights of way necessary for the construction of the Drain over and across the properties owned by Landowner and across such other lands as necessary for the construction of the Drain from the point of beginning at the outlet to the point of ending. Said easements or rights of way shall be secured in writing and in a form acceptable to the Drain Commissioner. The Landowner shall be responsible for all costs for the recording of said easements, as directed by the Drain Commissioner.
4. Landowner shall secure all necessary permits or authorizations as may be required by local, state or federal law and provide copies to the Drain Commissioner. The Drain Commissioner shall be provided copies of all correspondence and reports involving any governmental agency with respect to the Drain.
5. The _____ Drain Maintenance Fund is agreed and understood as being for the sole benefit of the _____ Drain Drainage District at large, or part thereof, and that such payment shall not relieve the subject property from any future assessments levied pursuant to the Drain Code of 1956, as amended.
6. Landowner agrees to indemnify and hold harmless the Drain Commissioner for any and all claims, damages, lawsuits, costs and expenses, arising out of or incurred as a result of the Drain Commissioner assuming responsibility for the drain under federal, state and/or local environmental laws and regulations, including all future amendments to such laws or regulations and the administrative and judicial interpretation thereof, except for liability arising out of the gross negligence or intentional wrongful conduct of the Drain Commissioner or its agents.
7. Modification, amendments or waivers of any provision of the Agreement may be made only by the written mutual consent of the parties.

This Agreement shall become effective upon its execution by the Landowner and the Drain Commissioner and shall be binding upon the successors and assigns of each party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the duly authorized officers as of the day and year first above written.

In The Presence Of:

 Blaine Van Sickle
 Calhoun County Drain Commissioner

In The Presence Of:

By: _____

 Its: _____

STATE OF MICHIGAN)
) SS.
 COUNTY OF CALHOUN)

On this _____ day of _____, 200__, before me , a Notary Public in and for said County, personally appeared BLAINE VAN SICKLE, CALHOUN COUNTY DRAIN COMMISSIONER, to me known to be the person described in and who executed the foregoing instrument and acknowledged the same to be his free act and deed.

Notary Public
Calhoun County, Michigan
My Commissioner Expires: _____

STATE OF MICHIGAN)
) SS.
COUNTY OF _____)

On this _____ day of _____, 200__, before me , a Notary Public in and for said County, personally appeared (LANDOWNER), to me known to be the person described in and who executed the foregoing instrument and acknowledged the same to be his/her free act and deed.

Notary Public
_____ County, Michigan
My Commissioner Expires: _____

Instrument Drafted By:
Geoffrey H. Seidlein (P32401)
Stacy L. Hissong(P55922)
HUBBARD, FOX, THOMAS,
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